REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action dated May 16, 2007. After entry of this amendment, claims 1, 3, 4, 22 and 23 will continue to be pending in the application.

Reconsideration and allowance is respectfully requested in view of the remarks made below.

1. The Rejection under 35 U.S.C. § 103(a)

Claims 1, 3, 4, 22 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,095,544 to Peters et al. (hereinafter "Peters") in view of U.S. Patent No. 4,466,553 to Zenger (hereinafter "Zenger").

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." See MPEP 2143.03.

Peters teaches a method for producing a corrosion resistant can from tinplate. The focus of the patent is that in order to improve corrosion resistance, Peters teaches heating the cold formed cup to a temperature above 400° F. See *Peters*, the Abstract and Col. 1, lines 60-63 The process teaches using a starting stock of a planar sheet of steel having a coating of at least 0.25 pounds of tin per base box. See *Peters*, col. 1, lines 49-52. Elsewhere, it is suggested that one of the layers of the starting stock can be coated with 0.75 pounds of tin per base box. See *Peters*, Col. 2, lines 43-46 and Col. 7, lines 4-7. Nowhere in Peters is it disclosed what the pounds of tin per base box of the sidewalls are after the can is made. In fact, it is suggested in various places that the drawn sidewalls are reduced in thickness as part of the method of making of the can. See *Peters*, Col. 3, lines 35-36 and lines 58-63.

Only one reference is made in Peters regarding the thickness of a finished can and that is with respect to the bottom portion of the can and not to the sidewalls. Peters states "the bottom wall of the cup produced is of the same thickness as the starting stock but the sidewalls are reduced in thickness by the ironing step or steps." See *Peters*, Col. 3, lines 32-36. In this instance the thickness of the bottom portion remains the same only because bottom portion is sheared in the starting stock prior to the ironing process and therefore the bottom portion is not subjected to the same process that the sidewalls are. See *Peters*, Col. 3, lines 41-64.

Zenger is directed towards a composite container. The container has a liner contained within to seal food products. See *Zenger*, the Abstract. Generally speaking, the containers described in Zenger are direct towards thermoformed plastic containers. See *Zenger*, Col. 4, lines 63-65 and Col. 5, lines 36-43. There is some discussion of metal containers; however Zenger never mentions the pounds of tin per base box of a finished container.

The Applicant's claims are directed to a DWI can for packaging light colored fruits and vegetables. The claim language is directed towards the can after it has been constructed and not to the starting stock. Independent claim 1 requires *inter alia*, "a second unbreached, intact coating comprising tin on an inner surface thereof, said second unbreached, intact coating having a mass per unit area that is at least 0.20 pounds of tin per base box, said sidewall further comprising no additional protective coating on said unbreached, intact second coating." Independent claim 22 requires *inter alia* a "second unbreached, intact coating having a second thickness that is greater than said first thickness and comprises tin, said second unbreached, intact coating having a mass per unit area that is at least 0.20 pounds of tin per base box, said sidewall further comprising no additional protective coating on said second coating."

Neither Peters nor Zenger discloses or teaches having an inner coating of tin that is at least 0.20 pounds of tin per base box in the finished can. Peters suggests pounds of tin per base box for starting stock but not for finished cans. It is not known what effect the manufacturing process and heat treatment taught by Peters will have on the pounds of tin per base box. Furthermore, it would be improper for the Office Action to speculate what the effect would be without more information related to the effects of the process taught by Peters. Zenger simply does not have relevant teaching directed towards pounds of tin per base box for sidewalls.

Therefore, the Applicant respectfully submits that a *prima facie* case for obviousness has not been established since each and every limitation of the claims has not been met. Furthermore, dependent claims 3, 4 and 23 are allowable by virtue of their dependence upon an allowable base claim.

2. Conclusion

The Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he or she is respectfully invited to telephone the undersigned at 215-599-0600. Contact with the undersigned via electronic mail at takupstas@patentwise.com is hereby authorized[1] per MPEP 502.03.

Respectfully submitted,
/John L. Knoble/

John L. Knoble
Registration No. 39,387

Date: August 14, 2007

KNOBLE YOSHIDA & DUNLEAVY, LLC
Eight Penn Center- Suite 1350
1628 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 599-0600 Main
(215) 599-0601 Fax
takupstas@patentwise.com

[1] Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.